

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

THE ARCHDIOCESE OF MILWAUKEE	§	Master Docket No. 3:02-CV-1152-M
SUPPORTING FUND, INC., et al., On Behalf	§	
of itself and All Others Similarly Situated,	§	ECF
	§	
Lead Plaintiff,	§	<u>CLASS ACTION</u>
	§	
vs.	§	
	§	
HALLIBURTON COMPANY, et al.,	§	
	§	
Defendants.	§	
	§	
_____	§	
This Document Relates To:	§	
	§	
ALL ACTIONS.	§	
	§	
_____	§	

**CO-LEAD CLASS COUNSEL’S AND THE INSTITUTIONAL INVESTOR CLASS
REPRESENTATIVES’ MOTION TO STRIKE AMSF’S REPLY BRIEF IN SUPPORT
OF ITS MOTION TO SUBSTITUTE CO-LEAD CLASS COUNSEL OR, IN THE
ALTERNATIVE, FOR LEAVE TO FILE A RESPONSE IN OPPOSITION TO THE
REPLY**

I. INTRODUCTION

In moving to oust Co-Lead Class Counsel, Archdiocese of Milwaukee Supporting Fund, Inc. (“AMSF”) submitted a cursory two-page motion devoid of any competent evidentiary submission supporting the conclusory generalizations (relations have “deteriorated”) purportedly justifying the extraordinary relief AMSF sought. AMSF offered not one exhibit or other item of evidence in support of its motion. In the face of opposition papers demonstrating that AMSF’s motion fell far short of meeting its burden to achieve the “rare remedy” of ouster of counsel – with its attendant costs and delay for the plaintiff class – AMSF makes, *for the first time in its reply brief*, new arguments not in its motion, submitting no less than 26 exhibits as purported evidence of Co-Lead Class Counsel’s insufficiency. As the Laborers National Pension Fund, City of Dearborn Heights Act 345 Police & Fire Retirement System and the Plumbers and Pipefitters National Pension Fund (the “Institutional Investor Class Representatives”) and Co-Lead Class Counsel set forth in opposing AMSF’s motion, it is inappropriate for a movant to withhold evidence and argument until filing a reply brief to which the opposing party (ostensibly) cannot respond. *See* Co-Lead Class Counsel’s and the Institutional Investor Class Representatives’ Opposition to AMSF’s Motion Seeking Court Permission to Replace Co-Lead Class Counsel (“Opposition Brief”) at 20 n.15.

AMSF’s incendiary filing is an attempt to “game” the system by launching a vitriolic attack on counsel – based on hearsay, speculation and innuendo – but without any competent evidentiary submission from the Lead Plaintiff. And it was all done in a manner that would deny counsel any opportunity to refute these baseless – yet potentially harmful – claims. AMSF’s “sandbagging” clearly contravenes this District’s rules. Accordingly, Co-Lead Class Counsel and the Institutional Investor Class Representatives respectfully request that the Court strike the Reply Brief in Support of the Motion by Lead Plaintiff the Archdiocese of Milwaukee Supporting Fund, Inc. for Substitution of Lead Counsel (“Reply”) and the improperly submitted exhibits. In the alternative,

Co-Lead Class Counsel and Institutional Investor Class Representatives respectfully request leave to submit an opposition to the Reply in order to address AMSF's arguments and evidence proffered for the first time in its Reply. The proposed opposition is filed concurrently herewith as Ex. A.¹

II. ARGUMENT

In the Northern District of Texas, "[t]he local rules do not permit a party to submit additional evidence with a reply brief, and a movant desiring to submit additional evidence in support of a motion must first seek leave of court." *Vogt v. Tex. Instruments, Inc.*, No. 3:05-CV-2244-L, 2006 U.S. Dist. LEXIS 67226, at *9 n.3 (N.D. Sept. 19, Tex. 2006) (striking supplemental appendix). As explained by Judge Fitzwater:

"Rule 7.1(f), the general reply brief rule that applies to all civil motions . . . does not refer to an evidentiary appendix. Accordingly, a party may not file a reply brief appendix without first obtaining leave of court. Because the purpose of a reply brief is to rebut the nonmovant's response, not to introduce new evidence, such leave will be granted only in limited circumstances."

Dethrow v. Parkland Health Hosp. Sys., 204 F.R.D. 102, 104 (N.D. Tex. 2001) (striking supplemental appendix).² Here, AMSF's entire Reply is based upon 26 newly proffered exhibits, which together raise issues and arguments nowhere made in AMSF's motion. AMSF has not sought leave of the Court to submit these new exhibits (nor do sufficient grounds exist for granting such permission). As the courts in *Voght* and *Dethrow* did, this Court should strike the exhibits attached to AMSF's Reply. Moreover, because AMSF's Reply is completely coextensive with – and dependent upon – the newly proffered evidentiary items that must be stricken from the record, Co-

¹ All exhibits are attached hereto, unless otherwise noted.

² See also *Linbrugger v. Abercia*, 363 F.3d 537, 541 (5th Cir. 2004) (granting motion to strike portion of a reply brief, holding that when a party makes an "argument for the first time in his reply brief . . . the argument is waived"); *Cavallini v. State Farm Mut. Auto Ins. Co.*, 44 F.3d 256, 260 n.9 (5th Cir. 1995) ("[W]e do not consider issues raised for the first time in a reply brief. . . . Moreover, the failure to provide any legal or factual analysis of an issue results in waiver of that issue."). Citations are omitted and emphasis is added, unless otherwise noted.

Lead Class Counsel and the Institutional Investor Class Representatives respectfully request that the Reply be stricken.³

Should the Court choose not to strike AMSF's Reply, Co-Lead Class Counsel and the Institutional Investor Class Representatives respectfully request leave of the Court to file a brief in opposition to the reply. In the rare instance where courts in this District refuse to strike argument and evidence submitted for the first time in a reply brief, submission of a responsive brief is appropriate. *See, e.g., Schimek v. MCI, Inc.*, No. 3:05-CV-0045-P, 2006 U.S. Dist. LEXIS 54747, at *3 n.5 (N.D. Tex. Aug. 7, 2006) ("In such circumstances, a sur-reply is wholly merited."); *Pa. Gen. Ins. Co. v. Story*, No. 3:05-CV-0330-G, 2003 U.S. Dist. LEXIS 9923, at *2 (N.D. Tex. June 10, 2003) ("granting leave to file a surreply . . . to respond to the new argument raised in the defendant's reply brief"). The Reply includes many unjustified accusations – often based on hearsay, innuendo and speculation – that attack the integrity of plaintiffs' counsel. If this incendiary material remains in the case, fairness mandates that counsel be allowed to fully respond to these attacks.

Because of the nature of the attacks on their ethics and integrity, Co-Lead Class Counsel do not want these baseless accusations to remain "of record" and un-refuted for any length of time. They have the potential for reputational harm as they are used – or abused – by the media, our adversaries or our competitors. Given the way former Scott+Scott, LLP partner Neil Rothstein – now AMSF's so-called Special Counsel – has paraded AMSF's motion before the media⁴ and

³ If AMSF has not forfeited its right to file a reply by these tactics, the Court should direct that any reply it is permitted to file **not** contain any new evidentiary items or claims and be a proper reply limited to dealing with matters raised in the original motion and opposition.

⁴ *See* Daniel Fisher, "Battle of the Class-Action Titans," *Forbes.com*, Nov. 28, 2006 ("The lead plaintiff in a politically tinged securities lawsuit against Halliburton has taken the unusual step of asking the court to replace class-action king William Lerach **Neil Rothstein, an attorney who is advising the AMS Fund, said the fund was concerned that Lerach's own mounting legal difficulties might pose a conflict 'My client commends Mr. Lerach on the job he's done so**

constantly features updates concerning it on the website of his new organization, Worldwide Tree Group™ (Truth in Corporate Justice) (www.worldwidetree.org), which solicits investors to participate in class action suits – it is not surprising that within hours of AMSF’s new filing, the baseless accusations of its improper Reply brief were reported in *The Wall Street Journal* and *CNNMoney.com*. See Law Blog, “Client Wants to Fire Lerach,” *Wall St. J.*, Dec. 29, 2006, Ex. C; Roger Parloff, “Client Yearning to Fire Attorney Lerach Says *Fortune* Story Was Last Straw,” *CNNMoney.com*, Dec. 28, 2006, Ex. D; Susan Pulliam, “Here’s a Class-Action Novelty: Client vs. Lawyer; Citigroup Loses a Contest for Merger-Deal Credit,” *Wall St. J.*, Dec. 30, 2006, at B3, Ex. E.⁵ Thus, the Institutional Investor Class Representatives and Co-Lead Class Counsel

far, but at this time thinks it’s in the best interest of everyone involved that he step aside,’ Rothstein said.”), Ex. B.

⁵ Rothstein is now giving a play-by-play of this motion by repeatedly updating his website and issuing press releases with each new filing. In the January 4, 2007 Truth in Corporate Justice LLC press release, he stated:

Lead Plaintiff in Halliburton Securities Litigation to Send Attorneys Packing

This is an update concerning the Halliburton Securities Litigation. Truth in Corporate Justice LLC (“TCJ”) is Special Counsel to the AMS Fund, Inc. on Securities Matters. . . .

. . . January 4, 2007 – Truth in Corporate Justice LLC (“TCJ”) (www.worldwidetree.org) issues this press release to advise shareholders and the concerned public that the Archdiocese of Milwaukee Supporting Fund, Inc. (“AMS Fund”), Lead Plaintiff in the Halliburton Securities Litigation matter, is seeking to substitute lead counsel. . . .

*. . . Truth in Corporate Justice LLC’s founder, Neil Rothstein (a former Scott + Scott partner), Special Counsel to the AMS Fund, **stated that this is an unfortunate but necessary change that was unexpected at the time Mr. Lerach’s firm first intervened in this case.***

Some of the most important reasons for the change in counsel request, as stated in the Reply Brief filed on December 27, 2006, are . . . there exists a potentially negative impact on the litigation as a result of the proliferation of media attention surrounding William S. Lerach, which could possibly shift the focus from

respectfully request the Court rule as quickly as possible on this motion so if the improper filing is not stricken an opposition brief can be filed to refute the false claims made by AMSF.

III. CONCLUSION

For the reasons stated herein, the requested relief should be granted. Co-Lead Class Counsel and the Institutional Investor Class Representatives respectfully request oral argument on this motion to strike and the underlying motion to oust Co-Lead Class Counsel.

DATED: January 8, 2007

Respectfully submitted,

PROVOST & UMPHREY LAW FIRM, LLP
JOE KENDALL
State Bar No. 11260700
WILLIE C. BRISCOE

s/JOE KENDALL
JOE KENDALL

the merits of the case and turn it into a convoluted battle between Lerach and the government. The conflict: an attorney under federal investigation is representing a lead plaintiff who has brought a lawsuit against a sitting vice president's former company where he was Chief Executive Officer. The Vice President is not a defendant in this action. The Reply Brief also states that the Department of Justice's ongoing criminal investigation of Lerach and his former firm, Milberg, Weiss, Bershad, Hynes & Lerach, which has led to the indictment of two of Lerach's former partners and his predecessor firm, has brought to light facts not disclosed to the Court or Lead Plaintiff (as summarized in the Fortune.com article published recently available at <http://money.cnn.com/blogs/legalpad>).

. . . Neil Rothstein, founder of TCJ, says that it is unfortunate that another change in counsel is necessary at this time; however, the amount of information that the current lead counsel hid from the Lead Plaintiff clearly does not comport with what is in the best interest of the client or the class. *"While the Lead Plaintiff sought to have this transition occur with the dignities of those involved remaining intact, the realities amount to far more than the loss of dignity," stated Rothstein. "This is not about guilt or innocence; it is about the appearance of impropriety, conflicts of interest, and ethical behavior."*

Press Release, Truth in Corporate Justice LLC, "Lead Plaintiff in Halliburton Securities Litigation to Send Attorneys Packing" (Jan. 4, 2007), Ex. F.

State Bar No. 24001788
3232 McKinney Avenue, Suite 700
Dallas, TX 75204
Telephone: 214/744-3000
214/744-3015 (fax)

Liaison Counsel

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
WILLIAM S. LERACH
G. PAUL HOWES
ANDREW J. BROWN
MATTHEW P. SIBEN
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: 619/231-1058
619/231-7423 (fax)

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
THOMAS G. WILHELM
9601 Wilshire Blvd., Suite 510
Los Angeles, CA 90210
Telephone: 310/859-3100
310/278-2148 (fax)

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
EX KANO S. SAMS II
100 Pine Street, Suite 2600
San Francisco, CA 94111
Telephone: 415/288-4545
415/288-4534 (fax)

SCOTT + SCOTT, LLP
DAVID R. SCOTT
MARK V. JACKOWSKI
DENISE V. ZAMORE

s/DAVID R. SCOTT
DAVID R. SCOTT

108 Norwich Avenue
Colchester, CT 06415
Telephone: 860/537-3818
860/537-4432 (fax)

SCOTT + SCOTT, LLP
EDMUND W. SEARBY
GEOFFREY M. JOHNSON
33 River Street
Chagrin Falls, OH 44022
Telephone: 440/247-8200
440/247-8275 (fax)

SCOTT + SCOTT, LLP
BETH KASWAN
75 Rockefeller Plaza, Suite 1915
New York, NY 10019
Telephone: 212/710-1040
212/710-1041 (fax)

SCOTT + SCOTT, LLP
ARTHUR L. SHINGLER III
600 B Street, Suite 1500
San Diego, CA 92101
Telephone: 619/233-4565
619/233-0508 (fax)

Co-Lead Counsel for Plaintiffs

KILGORE & KILGORE
THEODORE C. ANDERSON
State Bar No. 01215700
3109 Carlisle
Dallas, TX 75204
Telephone: 214/969-9099
214/953-0583 (fax)

Liaison Counsel

O'DONOGHUE & O'DONOGHUE
LOUIS P. MALONE
4748 Wisconsin Avenue, NW
Washington DC 20016
Telephone: (202) 362-0041
(202) 362-2640 (fax)

Additional Plaintiff's Counsel

CERTIFICATE OF SERVICE

I hereby certify that on January 8, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/WILLIAM S. LERACH
WILLIAM S. LERACH

LERACH COUGHLIN STOIA GELLER
RUDMAN & ROBBINS LLP
655 West Broadway, Suite 1900
San Diego, CA 92101-3301
Telephone: 619/231-1058
619/231-7423 (fax)

E-mail: billl@lerachlaw.com

Mailing Information for a Case 3:02-cv-01152

Electronic Mail Notice List

The following are those who are currently on the list to receive e-mail notices for this case.

- **Theodore Carl Anderson , III**
tca@kilgorelaw.com,kdd@kilgorelaw.com
- **Stuart L Berman**
ecf_filings@sbclasslaw.com
- **Thomas E Bilek**
tbilek@hb-legal.com,llockett@hb-legal.com
- **Willie Briscoe**
Provost_Dallas@yahoo.com,wbriscoe@provostumphrey.com,bgribble@provostumphrey.com
- **Jules Brody**
jbrody@ssbny.com
- **Andrew J Brown**
andrewb@lerachlaw.com,e_file_sd@lerachlaw.com
- **Jason L Cagle**
jason.cagle@tklaw.com,pam.clark@tklaw.com
- **Lea F Courington**
lcourington@gwinroby.com,jbalch@gwinroby.com,mlemons@gwinroby.com,shamner@gwin
- **Lindsey C Cummings**
lcummings@gwinroby.com,sroshto@gwinroby.com
- **Robert Edwin Davis**
davisr@hughesluce.com,boerdem@hughesluce.com,murosr@hughesluce.com
- **Paul W Denney**
denneyp@hughesluce.com,richey@hughesluce.com
- **John G Emerson , Jr**
john@emersonpoynter.com,tanya@emersonpoynter.com,swilson@emersonpoynter.com
- **William B Federman**
wfederman@aol.com,law@federmanlaw.com,ngb@federmanlaw.com
- **Dennis D Gibson**
gibson@gmwdlaw.com,cgilbert@gmwdlaw.com
- **Brian N Hail**

bhail@ghjhlaw.com,rradcliff@ghjhlaw.com,rperkins@ghjhlaw.com,drlilly@ghjhlaw.com

- **Michael K Hurst**

mhurst@ghjhlaw.com,tnoullet@ghjhlaw.com,cdeleon@ghjhlaw.com,bcongdon@ghjhlaw.com

- **Lawrence J Irving**

judge@butzdunn.com

- **Fred T Isquith**

isquith@whafh.com,barnes@whafh.com

- **Mark V Jackowski**

mvjackowski@scott-scott.com,cmcgowan@scott-scott.com

- **Joe Kendall**

Provost_Dallas@yahoo.com,jkendall@provostumphrey.com

- **Jeffrey R Krinsk**

jrk@classactionlaw.com,mag@classactionlaw.com,mlk@classactionlaw.com,fk@classactionlaw.c

- **William S Lerach**

e_file_sd@lerachlaw.com,kirstenb@lerachlaw.com

- **Wes Loegering**

loegerw@hughesluce.com,harrisj@hughesluce.com,valferd@hughesluce.com

- **Roger L Mandel**

rmandel@smi-law.com,laura@smi-law.com,tsweet@smi-law.com,bmarks@smi-law.com

- **Timothy R McCormick**

timothy.mccormick@tklaw.com,susan.covington@tklaw.com

- **James M McCoy**

jmccoy@gmwdlaw.com,cgilbert@gmwdlaw.com

- **Rod Phelan**

rod.phelan@bakerbotts.com,vivica.lamarche@bakerbotts.com

- **Scott Daniel Powers**

scott.powers@bakerbotts.com,barbara.martin@bakerbotts.com,melissa.depagter@bakerbotts.com

- **Scott E Poynter**

scott@emersonpoynter.com

- **Jessica B Pulliam**

jessica.pulliam@bakerbotts.com

- **Marcos G Ronquillo**

mronquillo@godwinpappas.com,cvillarreal@godwinpappas.com,jgonzalez@godwinpappas.com

- **Edmund W Searby**
esearby@scott-scott.com,aslaughter@scott-scott.com
- **Arthur L Shingler , III**
ashingler@scott-scott.com,cmcgowan@scott-scott.com
- **Kay E Sickles**
ksickles@sbclasslaw.com
- **Marc R Stanley**
mstanley@smi-law.com,laura@smi-law.com,tsweet@smi-law.com,bmarks@smi-law.com
- **Ronald W Stevens**
rstevens@klng.com,ckondon@klng.com,mquinn@klng.com,kasfour@klng.com
- **Robert M Thornton**
rmt@kilgorelaw.com
- **Emery L Vincent**
larryvin@gmail.com,beverly@emmonsjackson.com,lvincent@scottyoung.com
- **Robb L Voyles**
robb.voyles@bakerbotts.com
- **Craig M Walker**
craig_m_walker@sbcglobal.net,walkerlawllp@aol.com
- **Thomas G Wilhelm**
TWilhelm@lerachlaw.com,e_file_sd@lerachlaw.com
- **Martin Woodward**
mwoodward@smi-law.com,tsweet@smi-law.com,bmarks@smi-law.com
- **Alfred G Yates , Jr**
yateslaw@aol.com
- **Richard J Zook**
rzook@cdzc.com,rromero@cdzc.com,pmoore@cdzc.com

Manual Notice List

The following is the list of attorneys who are **not** on the list to receive e-mail notices for this case (who therefore require manual noticing). You may wish to use your mouse to select and copy this list into your word processing program in order to create notices or labels for these recipients.

Eric J Belfi
Murray Frank & Sailer
275 Madison Ave
Suite 801
New York, NY 10016

David Boies

Boies Schiller & Flexner
333 Main St
Armonk, NY 10504

Aaron Brody

Stull Stull & Brody
6 East 45th Street
New York, NY 10017

Thomas Burt

Wolf Haldenstein Adler Freeman & Herz
270 Madison Ave
Ninth Floor
New York, NY 10016

Steven E Cauley

Cauley Geller Bowman & Coates
PO Box 25438
Little Rock, AR 72221-5438

Darren J Check

Schifffrin Barroway Topaz & Kessler LLP - Radnor
280 King of Prussia Rd
Radnor, PA 19087

Patrick V Dahlstrom

Pomerantz Haudek Block Grossman & Gross
One N LaSalle St
Suite 2225
Chicago, IL 60602-3908

Leo W Desmond

Law Office of Leo W Desmond
2161 Palm Beach Lakes Blvd
Suite 204
West Palm Beach, FL 33409

Robert J Dyer

Dyer & Shuman
801 E 17th Ave
Denver, CO 80218-1417

, III

Nadeem Faruqi

Faruqi & Faruqi
320 East 39th Street
New York, NY 10016

Brian M Felgoise

Law Offices of Brian M Felgoise
PO Box 706
261 Old York Rd Suite 423
Jenkintown, PA 19046

Paul J Geller

Lerach Coughlin Stoia Geller Rudman & Robbins - Boca Raton
120 E Palmetto Park Rd
Suite 500
Boca Raton, FL 33432

Donald E Godwin

Godwin Gruber
Renaissance Tower
1201 Elm St
Suite 1700
Dallas, TX 75270-2084

Marc I Gross

Pomerantz Haudek Block Grossman & Gross
100 Park Avenue
26th Floor
New York, NY 10017-5516

Stanley M Grossman

Pomerantz Haudek Block Grossman & Gross
100 Park Avenue
26th Floor
New York, NY 10017-5516

Corey D Holzer

Holzer Holzer & Cannon LLC
1117 Perimeter Center West
Suite E-107
Atlanta, GA 30338

Adam J Levitt

Wolf Haldenstein Adler Freeman & Herz - Chicago
55 W Monroe St
Suite 1111
Chicago, IL 60603

Gary McGowan

One Riverway
Suite 2070
Houston, TX 77056

Brian Murray

Rabin & Peckel
275 Madison Ave
34th Floor
New York, NY 10016

Gregory M Nespole

Wolf Haldenstein Adler Freeman & Herz
270 Madison Ave
Ninth Floor
New York, NY 10016

Charles J Piven

Law Office of Charles J Piven
World Trade Center Baltimore
401 E Pratt St
Suite 2525
Baltimore, MD 21202

Neil Rothstein

Scott + Scott
108 Norwich Ave
PO Box 192
Colchester, CT 06415

Richard S Schiffrin

Schiffrin Barroway Topaz & Kessler LLP - Radnor
280 King of Prussia Rd
Radnor, PA 19087

Steven G Schulman

Milberg Weiss & Bershad - New York
1 Pennsylvania Plaza
49th Floor
New York, NY 10119

David R Scott

Scott + Scott
108 Norwich Ave
PO Box 192
Colchester, CT 06415

Patrick Slyne

Stull Stull & Brody
6 East 45th St
New York, NY 10017

Marc A Topaz

Schiffrin Barroway Topaz & Kessler LLP - Radnor
280 King of Prussia Rd
Radnor, PA 19087

Richard J Vita

Law Office of Richard J Vita
77 Franklin St
Suite 300
Boston, MA 02110

Marc I Willner

Schiffrin Barroway Topaz & Kessler LLP - Radnor
280 King of Prussia Rd
Radnor, PA 19087